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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,584	03/23/2004	Laurence N. Bascom	HT3985USNA	2245

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E I DU PONT DE NEMOURS AND COMPANY
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BARLEY MILL PLAZA 25/1128
4417 LANCASTER PIKE
WILMINGTON, DE 19805

EXAMINER

RUDDOCK, ULA CORINNA

ART UNIT PAPER NUMBER

1771

DATE MAILED: 07/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/806,584

Applicant(s)

BASCOM ET AL.

Examiner

Ula C. Ruddock

Art Unit

1771

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) 13, 14 and 16-19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 15 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/7/2004.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-12 and 15, drawn to a nonwoven fabric, classified in class 442, subclass 35.
 - II. Claims 13-14 and 16-19, drawn to a method of making a reinforced nonwoven fabric, classified in class 156, subclass 60.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions II and I are related as process of making and product made. The inventions are distinct if either or both of the following can be shown: (1) that the process as claimed can be used to make other and materially different product or (2) that the product as claimed can be made by another and materially different process (MPEP § 806.05(f)). In the instant case, the product can be made by another process, i.e. by coextruding the mat and the scrim and then spray coating the binder.

3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

4. During a telephone conversation with Andrew Golian on July 20, 2005, a provisional election was made with traverse to prosecute the invention of Group I, claims 1-12 and 15.

Affirmation of this election must be made by applicant in replying to this Office action. Claims 13-

14 and 16-19 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1-12 and 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 10/996897. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1-12 and 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-8, 10, and 11 of copending Application No. 11-017045. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1-12 and 15 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-20 of copending Application No. 11/023153. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims are obvious variants over one another.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 1-12 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Erb, Jr. et al. (US 2002/0182967) in view of Matsuda et al. (US 5,316,834) and Assink et al. (US 2004/0028958). Erb, Jr. et al. disclose a fire blocking material comprising nonwoven fabric including para-aramid fibers (abstract) and a polyester woven scrim [0017]. It should be noted that the Examiner is equating the crimped organic fibers on the first side disclosed in the present invention to Erb's nonwoven p-aramid fibers. The nonwoven fabric layer is generally supported by at least one scrim [0027]. In some embodiments, the fabric may incorporate multiple layers of scrim material and multiple nonwoven fabric layers [0027]. A combustible seat cushion bottom is

composed of a foam cushion and a thin woven fabric cover. The fiber blocking fabric covers the foam cushion seat bottom [0023]. Erb, Jr. fails to disclose that the p-aramid fibers are crimped and that the p-aramid fibers are held in a compressed state by a thermoplastic binder.

Matsuda et al. (US 5,316,834) disclose a flame-resistant, fiber-reinforced thermoplastic sheet (col 4, ln 43-46). A preferred organic heat-resistant fiber is para-aramid fiber (col 5, ln 39-41). The heat-resistant fiber is crimped to a web from to impart the fiber structure material with a high fiber-entangling strength (col 5, ln 64-67).

Assink et al. (US 2004/0028958) disclose a fire-resistant batt and panel that comprises fiber and binder material (abstract). The fiber component can include aramid fibers [0020]. The binder component acts as an adhesive and binder to bond the fibers into a relatively rigid configuration [0022]. A preferred binder can be polyester in a fibrous form or a particle (i.e. powder) form [0022].

It would have been obvious to have used Matsuda's crimping process on the fibers of Erb, Jr. et al. and Assink et al., motivated by the desire to create a fabric that is lightweight and has excellent mechanical properties. It also would have been obvious to have used Assink's polyester fiber binder or polyester powder binder on the fabric of Erb, Jr. et al. and Matsuda et al., motivated by the desire to create a fabric having greater strength and load-bearing properties.

With regard to Applicant's disclosure of the fabric being "capable of increasing its thickness" by at least three times, five times, and ten times, it has been held that a recitation that an element is "capable of" performing a function is not a positive limitation but only requires the

ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

11. Claims 1-4 and 6-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Corner (US 2003/0232560) in view of Matsuda et al. (US 5,316,834) and Assink et al. (US 2004/0028958). Corner (US 2003/0232560) discloses flame resistant fabrics having increased strength. The flame resistant fabric includes a plurality of flame resistant body yarns that form a body of the fabric and a plurality of relatively tough yarns provided in discrete positions within the fabric body (abstract). The tough yarns arranged in a grid (i.e. scrim) pattern in which several body yarns are placed between each consecutive tough yarn in both the warp and weft direction [0025]. The body yarns can be para-aramid flame resistant fibers [0023] and the tough yarns comprise flame resistant polyester [0031]. It should be noted that the Examiner is equating the crimped organic fibers on the first side disclosed in the present invention to the p-aramid body yarns of Corner. Corner fails to disclose that the p-aramid fibers are crimped and that the p-aramid fibers are held in a compressed state by a thermoplastic binder.

Matsuda et al. (US 5,316,834) disclose a flame-resistant, fiber-reinforced thermoplastic sheet (col 4, ln 43-46). A preferred organic heat-resistant fiber is para-aramid fiber (col 5, ln 39-41). The heat-resistant fiber is crimped to a web from to impart the fiber structure material with a high fiber-entangling strength (col 5, ln 64-67).

Assink et al. (US 2004/0028958) disclose a fire-resistant batt and panel that comprises fiber and binder material (abstract). The fiber component can include aramid fibers [0020]. The binder component acts as an adhesive and binder to bond the fibers into a relatively rigid

configuration [0022]. A preferred binder can be polyester in a fibrous form or a particle (i.e. powder) form [0022].

It would have been obvious to have used Matsuda's crimping process on the fibers of Corner and Assink et al., motivated by the desire to create a fabric that is lightweight and has excellent mechanical properties. It also would have been obvious to have used Assink's polyester fiber binder or polyester powder binder on the fabric of Corner and Matsuda et al., motivated by the desire to create a fabric having greater strength and load-bearing properties.

With regard to Applicant's disclosure of the fabric being "capable of increasing its thickness" by at least three times, five times, and ten times, it has been held that a recitation that an element is "capable of" performing a function is not a positive limitation but only requires the ability to so perform. It does not constitute a limitation in any patentable sense. *In re Hutchison*, 69 USPQ 138.

Conclusion

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ula C. Ruddock whose telephone number is 571-272-1481. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel H. Morris can be reached on 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

UCR *UCR*

Ula Ruddock
Ula C. Ruddock
Primary Examiner
Tech Center 1700